

### **REMARKS**

The Office Action is responsive to appeal brief filed on January 9, 2008. Claims 20-57 are pending with this paper. Claims 39-57 are withdrawn from consideration. Claims 1-19 and 58-76 were previously canceled without prejudice. Claims 20-38 stand rejected by the Office Action.

Applicant refers to the telephonic discussion with the Examiner on July 29, 2008 for clarification of the Cook recitation. In particular, the Office Action recites "col. 10, lines 25-67 and col. 62-55." (Page 4, line 13; page 7, line 2; page 7, line 22.) The citation appears to include a typographical error. The Examiner indicated that the citation should be "col. 10, lines 25-67 and col. 14, lines 36-55." Applicant is responding accordingly.

Applicant also refers to the telephonic interview with the Examiner on August 21, 2008. Examiner and Applicant discussed the 101 rejections of claims 29 and 30-38 and the 103 rejections of independent claims 29 and 30. Examiner did not have any issue with claim 29 regarding the 101 rejection. An agreement regarding the other 101 rejections and the 103 rejections was not reached. Applicant also referenced additional arguments relating to the dependent claims but did not discuss the specifics during the interview.

### **Claim Rejections - 35 U.S.C. §101**

**Claim 29 is rejected under 35 U.S.C. 101 because the claimed invention is allegedly directed to non-statutory material.**

The Office Action alleges that (Page 3, section 4.):

Specifically, 29 is directed to apparatus comprising logic units or software modules which are a program per se.

Applicant is amending claim 29 to include "An apparatus comprising: a memory; and a processor coupled to the memory and configured to perform, based on instructions stored in the memory: (a)connecting a server and one or more users and a first virtual instructor; (b)selecting a destination within the server to interact with the one or more users; (c)coupling the one or more users through the server based on the selected destination; (d)establishing interaction parameters for the one or more users based on the selected destination; and (e)dynamically adding a second virtual instructor with the first virtual instructor and the one or more users." The amendment is supported by the specification as originally filed, *e.g.*, Figure 1 and page 11, line 15- page 22,

line 8. Applicant believes that claim 29 is directed to statutory matter and requests reconsideration.

**Claims 30-38 are rejected under 35 U.S.C. 101 because the claimed invention is allegedly directed to non-statutory material.**

The Office Action alleges that (Page 3, section 5.):

Claims 30-38 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Specifically, claims 30-38 are directed to computer program not embodied in computer readable physical medium.

Applicant is amending independent claim 30 to include “A computer-readable storage medium having computer-executable instructions that when executed perform: (a)connecting a server and one or more users and a first virtual instructor; (b)selecting destination within the server to interact with the one or more users;(c)coupling the one or more users through the server based on the selected destination;(d)establishing interaction parameters for the one or more users based on the selected destination; and (e)dynamically adding a second virtual instructor with the first virtual instructor and the one or more users.” The amendment is supported by the application as originally filed, *e.g.*, Figure 1 and page 11, line 15- page 22, line 8. For example, the specification discloses RAM 114, ROM 116, and disk storage unit 120 that are connected to central processing unit 110 as shown in Figure 1. (Page 11, line 15 – page 12, line 2.) The specification further discloses embodiments of the invention, in which computer-executable instructions are written in JAVA, C, and C++ languages. (Page 12, lines 4-11.) From the above teachings disclosed in the specification, a person of ordinary skill would appreciate that “A computer-readable storage medium” (*e.g.*, disk storage unit 120) may contain computer-executable instructions for performing features as included in claim. Applicant thus requests reconsideration of claim 30. Applicant is similarly amending dependent claims 31-38 to include “The computer-readable storage medium of claim 30.” Applicant believes that claims 30-38 are directed to statutory material and requests reconsideration.

**Claim Rejections - 35 U.S.C. §103**

**Claims 20-38 are rejected by the Office Action under 35 U.S.C. 103(a) as allegedly being unpatentable over U.S. Patent No. 5,310,349 (Daniels) in view of U.S. Patent No. 6,427,063 (Cook).**

Regarding independent claim 20, the combination of Daniels and Cook fails to even suggest the feature of “dynamically **adding a second virtual instructor** with the first virtual instructor and the one or more users.” (Emphasis added.) Similarly, the combination fails to suggest the feature of “dynamically adding a second virtual instructor with the first virtual instructor and the one or more users” in independent claim 29 and the feature of “dynamically adding a second virtual instructor with the first virtual instructor and the one or more users” in independent claim 30. Regarding independent claim 20, the Office Action admits (Page 4.):

Daniels is silent regarding: dynamically adding second virtual instructor with the first virtual instructor and the one or more users.

The Office Action alleges (Page 4.):

Cook discloses an agent based instruction system including dynamically adding second virtual instructor (virtual tutor)( see col. 10, lines 25-67 and col. 62-55). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to incorporate the teaching of Cook such as dynamically adding second virtual instructor/tutor with the first virtual instructor and the one or more users into the system of Daniels in order to provide individualized guidance to the students.

Cook recites (Column 10, lines 25-40. Emphasis added.):

In view of these objects and advantages, FIG. 1 illustrates the principal actors and the principal functional components in an ABI System. These include, generally, materials engine 102, agent software 108, and student data object 109, all of which interact with student 101 and with teachers and administrators 106 via a computer network described below in conjunction with FIG. 2 **to create a virtual tutor of student 101**. Student 101 is typically one of many students enrolled in a school or similar institution. **Central to the ABI System is the virtual tutor individualized to each student, which formed by the functioning of agent software 108 with student data object 109**, which stores characteristics of student 101 and assignments and standards set by teachers and administrators 106. Other actors not shown in FIG. 1 can be relevant in particular applications, for example, parents in the case of primary and secondary education.

While Cook may discuss a virtual tutor of student 101 that is supported by agent software 108, Cook fails to discuss any thing about a second virtual tutor and consequently fails to suggest the feature of “dynamically adding a second virtual instructor with the first virtual instructor and the one or more users.” For example, agent software 108, in reference to fig. 1, interacts with student data object 109 (corresponding to student 101); however, Cook fails to even suggest interaction of agent 108 with a second agent.<sup>1</sup>

Claims 29 and 30 include similar features as discussed above. Claim 29 includes the feature of “dynamically adding a second virtual instructor with the first virtual instructor and the one or more users.” Also, claim 30 includes “dynamically adding a second virtual instructor with the first virtual instructor and the one or more users.” Moreover, claims 21-28 ultimately depend from claim 20 and claims 31-38 ultimately depend from claim 30. Thus, claims 21-28 and 31-38 are patentable for at least the above reasons. Applicant requests reconsideration of claims 20-38.

Moreover, regarding claim 21, the Office Action alleges that (Page 4.):

In considering claim 21, Daniels disclose the method for providing one or more virtual instructors as recited in claim 20, wherein the second virtual instructor monitors progress and provides feedback (see col. 3, lines 29-31 and col. 6, lines 36-63 and col. 14, lines 37-64).

However, Daniels fails to teach the feature of “wherein the second virtual instructor monitors progress and provides feedback.” Daniels does disclose (Column 3, lines 25-40.):

Among the functions provided by the present invention are the following:

- 1) deliver a customized sequence of appropriate learning events to each student;
- 2) direct and monitor student progress and various online and offline activities and tailor instruction to fully integrate them into the classroom;
- 3) adapt a standard sequence of curricula and prescribe lessons from third-party

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<sup>1</sup> For example, Cook recites “In view of these objects and advantages, FIG. 1 illustrates the principal actors and the principal functional components in an ABI System. These include, generally, materials engine 102, agent software 108, and student data object 109, all of which interact with student 101 and with teachers and administrators 106 via a computer network described below in conjunction with FIG. 2 to create a virtual tutor of student 101. Student 101 is typically one of many students enrolled in a school or similar institution. Central to the ABI System is the virtual tutor individualized to each student, which formed by the functioning of agent software 108 with student data object 109, which stores characteristics of student 101 and assignments and standards set by teachers and administrators 106. Other actors not shown in FIG. 1 can be relevant in particular applications, for example, parents in the case of primary and secondary education.” (Column 10, lines 25-40.)

materials;

- 4) branch students to appropriate remedial or enrichment activities;
- 5) generate criterion-referenced pretests and post-tests; and
- 6) create, maintain, and update instructional records on each student and electronically transfer records within and between schools.

However, Daniels fails to teach anything about providing feedback. Daniels also discloses (Column 6, lines 37-64.):

Within the teacher group there are three different subgroups. The first teacher subgroup is that of regular teacher. The regular teacher is limited to access of records of students in sections.

The second teacher subgroup is that of a substitute teacher. A substitute teacher has access to student records for a particular section. Access is restricted only to a particular time period.

The third teacher subgroup is that of media specialist. A media specialist may add and delete access to a card catalog of references (data base information on all books, video tapes, audio tapes, and films used in instruction) that are not specifically kept in the classroom. Productivity tools specifically available in the media center are the card catalog, and may include an electronic encyclopedia such as Compton's Multimedia Encyclopedia, and may include an electronic dictionary such as the Merriam-Webster Dictionary.

The sixth main user access class is that of a vendor. A vendor is a technician who initially installs and configures the system. Configuration may involve activating or suppressing certain features of the system. The vendor may also have access to special system usage or performance reports. They may also have access to helpful system debugging reports. A vendor inputs a report to the IMS describing each visit.

Daniels merely discloses different teacher subgroups accessing different portions of the instructional management system (IMS).

Daniels further discloses: (Column 14, lines 37-64.):

FIG. 20 is a flow chart illustrating the System Monitor functions available in the IMS. The System Monitor gathers information that describes the state of each workstation and then provides that information for the user to view, as shown in FIG. 20. If either view fields 90, sort fields 92, or modify fields 94 are selected, a submenu 96 is presented to allow a user to perform the desired function on user

information, workstation information, or application information. If assign temporary activity 98 is selected, a temporary activity is assigned to a student at 100. If view or edit sequence 102 is selected, the sequence may be viewed at 104 and start and end dates assigned at 106. If system log 108 is selected, the system log is displayed at 110. If maintenance log 112 is selected, the maintenance log is displayed at 114.

The System Monitor presents the state of the system in two formats, a graphical format and a list format. The System Monitor allows the user to specify which workstations to monitor. For the graphical presentation, the user will specify the workstations by selecting which room is to monitor. For the list presentation, the user specifies which workstations are to be monitored by selecting those workstations that have Students that belong to a particular Section or by selecting one or more Rooms. For the list presentation the user may also specify which status items will be used for sorting the information to be displayed.

Daniels merely discloses allowing a user to perform the desired function on user information, workstation information, or application information, including specifying which workstations to monitor. Claim 31 includes the similar feature of “wherein the second virtual instructor monitors progress and provides feedback.”

Also, regarding claim 22, the Office Action alleges that (Page 5. Emphasis added.):

In considering claim 22, Daniels disclose the method for providing one or more virtual instructors as recited in claim 20, wherein the second virtual instructor (second teacher) is selected by one [or] more users (see col. 6, lines 36-63 and col. 14, lines 37-64).

However, Daniels fails to teach the feature of “wherein the second virtual instructor is selected by the one or more users.” As discussed above, Daniels fails to suggest anything about selecting a second virtual instructor. Claim 32 includes the similar feature of “wherein the second virtual instructor is selected by the one or more users.”

Also, regarding claim 23, the Office Action alleges that (Page 5. Emphasis added.):

In considering claim 23, Daniels disclose the method for providing one or more virtual instructors as recited in claim 20, wherein the second virtual instructor becomes the principal (see col. 6, lines 36-63 and col. 14, lines 37-64).

However, Daniels fails to teach the feature of “wherein the second virtual instructor becomes the principal instructor.” As discussed above, Daniels fails to suggest anything about an instructor

becoming the principal instructor. Claim 33 includes the similar feature of “wherein the second virtual instructor becomes the principal instructor.”

Also, regarding claim 24, the Office Action alleges that (Page 5. Emphasis added.):

In considering claim 24, Daniels disclose the method for providing one or more virtual instructors as recited in claim 20, wherein the second virtual instructor works with the first instructor to instructor [instruct] the one or more users (see col. 6).

However, Daniels fails to teach the feature of “wherein the second virtual instructor works with the first instructor to instruct the one or more users.” As discussed above, Daniels fails to suggest anything about the second virtual instructor working with the first instructor to instruct a user. Claim 34 includes the similar feature of “wherein the second virtual instructor works with the first instructor to instruct the one or more users.”

Also, regarding claim 25, the Office Action alleges that (Page 5. Emphasis added.):

In considering claim 25, Daniels disclose the method for providing one or more virtual instructors as recited in claim 20, wherein the second virtual instructor collaborates privately with the first instructor (col. 6, lines 36-63).

However, Daniels fails to teach the feature of “wherein the second virtual instructor collaborates privately with the first virtual instructor.” As discussed above, Daniels fails to suggest anything about the second instructor collaborating with the first instructor. Claim 35 includes the similar feature of “wherein the second virtual instructor collaborates privately with the first virtual instructor.”

Also, regarding claim 27, the Office Action alleges that (Page 6. Emphasis added.):

In considering claim 27, Daniels disclose the method for providing one or more virtual instructors as recited in claim 20, wherein the second virtual instructor is selected by the first virtual instructor (see col. 6, lines 36-63 and col. 14, lines 37-64).

However, Daniels fails to teach the feature of “wherein the second virtual instructor is selected by the first virtual instructor.” As discussed above, Daniels fails to suggest anything about the first instructor selecting the second instructor. Claim 37 includes the similar feature of “wherein the second virtual instructor is selected by the first virtual instructor.”

Also, regarding claim 28, the Office Action alleges that (Page 6. Emphasis added.):

In considering claim 28, Daniels disclose the method for providing one or more virtual instructors as recited in claim 20, wherein [the second virtual instructor] the interaction parameters include support of [for] electronic distribution of materials from the second virtual instructor (see col. 6, lines 36-63 and col. 14, lines 37-64).

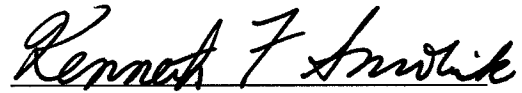
However, Daniels fails to teach the feature of “wherein the interaction parameters include support for electronic distribution of materials from the second virtual instructor.” As discussed above, Daniels fails to suggest anything about electronic distribution of materials from the second instructor. Claim 38 includes the similar feature of “wherein the interaction parameters include support for electronic distribution of materials from the second virtual instructor.”



All objections and rejections have been addressed. Hence, it is respectfully submitted that the present application is in condition for allowance, and a notice to that effect is earnestly solicited.

Respectfully submitted,

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A handwritten signature in cursive script, reading "Kenneth F. Smolik".

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